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2008 FEB 29 P 12:29

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U.S. DISTRICT COURT
NORTHERN DIST. OF CALIF., S.D.

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10 MICHAEL RODRIGUES

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

13 IVONNE GUERRERO, individually and
14 as Guardian ad Litem for: JESUS I.
15 GUERRERO, a Minor Child; LUIS
16 GUERRERO, a Minor Child; ICELLA
17 M. GUERRERO, a Minor Child;

18 Plaintiffs,

19 vs.

20 COUNTY OF SAN BENITO; COUNTY
21 OF SAN BENITO SHERIFF'S
22 DEPARTMENT; MICHAEL
23 RODRIGUES; CURTIS J. HILL

24 Defendants.

Case No: C08-00307 PVT

**ANSWER OF DEFENDANT MICHAEL
RODRIGUES TO PLAINTIFFS'
COMPLAINT FOR DAMAGES FOR
WRONGFUL DEATH AND SURVIVAL
ACTION FOR VIOLATION OF CIVIL
RIGHTS**

DEMAND FOR JURY TRIAL

25 Defendant MICHAEL RODRIGUES, (hereinafter "Defendant") answers plaintiffs'
26 Complaint for Damages for Wrongful Death and Survival Action for Violation of Civil Rights
27 as follows:

28 1. In answer to Paragraph 1 of the Plaintiff's Complaint herein, this answering
defendant admits that while in the course and scope of his duties as a Deputy with the County
of San Benito, he was in an altercation with Israel Guerrero on June 10, 2007, and that
thereafter, Israel Guerrero passed away; but this answering defendant denies the remainder
of the allegations in this paragraph and specifically denies that his actions caused the injuries

1 and/or death of Israel Guerrero and caused the plaintiffs to suffer damages, and this
2 answering defendant further denies that his actions were unprovoked, or malicious, or that
3 this answering defendant used excessive force.

4 2. In answer to Paragraph 2 of Plaintiffs' Complaint herein, this answering defendant
5 acknowledges the jurisdiction of the United States District Court.

6 3. In answer to Paragraph 3 of Plaintiffs' Complaint herein, this answering defendant
7 acknowledges the jurisdiction of the United States District Court.

8 4. In answer to Paragraph 4 of Plaintiffs' Complaint herein, this answering defendant
9 acknowledges the jurisdiction of the United States District Court.

10 5. In answer to Paragraph 5 of Plaintiffs' Complaint herein, there are no charging
11 allegations with respect to Paragraph 5.

12 6. In answer to Paragraph 6 of Plaintiffs' Complaint herein, this answering defendant
13 admits that Israel Guerrero died on June 10, 2007, but except as admitted herein, this
14 answering defendant lacks information and on that basis, denies the remaining allegations
15 of this Paragraph.

16 7. In answer to Paragraph 7 of Plaintiffs' Complaint herein, this answering defendant
17 lacks information and on that basis, denies the allegations.

18 8. In answer to Paragraph 8 of Plaintiffs' Complaint herein, this answering defendant
19 lacks information and on that basis, denies the allegations.

20 9. In answer to Paragraph 9 of Plaintiffs' Complaint herein, this answering defendant
21 lacks information and on that basis, denies the allegations.

22 10. In answer to Paragraph 10 of Plaintiffs' Complaint herein, this answering
23 defendant lacks information and on that basis, denies the allegations.

24 11. In answer to Paragraph 11 of Plaintiffs' Complaint herein, this answering
25 defendant lacks information and on that basis, denies the allegations.

26 12. In answer to Paragraph 12 of Plaintiffs' Complaint herein, this answering
27 defendant admits to the allegations therein.

28

1 13. In answer to Paragraph 13 of Plaintiffs' Complaint herein, this answering
2 defendant admits to the allegations therein.

3 14. In answer to Paragraph 14 of Plaintiffs' Complaint herein, this answering
4 defendant admits to the allegations therein.

5 15. In answer to Paragraph 15 of Plaintiffs' Complaint herein, this answering
6 defendant admits that on June 10, 2007, this answering defendant was a San Benito County
7 Sheriff's Deputy who was working under color of law at the time of the incident. Except as
8 specifically admitted herein, this answering defendant denies the remaining allegations.

9 16. In answer to Paragraph 16 of Plaintiffs' Complaint herein, this answering
10 defendant admits that on June 10, 2007, this answering defendant was acting pursuant to
11 Defendant COUNTY's customs and policies but denies that those policies resulted in the
12 wrongful death of decedent, Israel Guerrero. This answering defendant further denies that
13 he used unreasonable force and denies that decedent's constitutional rights and personal
14 rights were violated. This answering defendant admits that he was in uniform, on duty as a
15 sheriff's deputy, and acting within the scope of his employment on June 10, 2007.

16 17. In answer to Paragraph 17 of Plaintiffs' Complaint herein, this answering
17 defendant admits to the allegations therein.

18 18. In answer to Paragraph 18 of Plaintiffs' Complaint herein, this answering
19 defendant admits to the allegations therein.

20 19. In answer to Paragraph 19 of Plaintiffs' Complaint herein, there are no specific
21 charging allegations with respect to Paragraph 5.

22 20. In answer to Paragraph 20 of Plaintiffs' Complaint herein, this answering
23 defendant denies that he confronted Decedent but admits that he had his minor daughter in
24 his patrol car.

25 21. In answer to Paragraph 21 of Plaintiffs' Complaint herein, this answering
26 defendant denies that he confronted and assaulted Israel Guerrero. In further answer,
27 defendant admits that during the course of the stop that he and other law enforcement
28 authorities used force including a taser and a firearm but denies that any of the force used

1 was unnecessary and unwarranted in the performance of their duties, and finally, denies that
2 unreasonable, unwarranted and excessive force was used.

3 22. In answer to Paragraph 22 of Plaintiffs' Complaint herein, this answering
4 defendant denies that he assaulted, battered, and abused decedent. Defendant further
5 denies that the use of force employed was done in the absence of just cause or provocation.
6 Defendant denies that decedent's constitutional rights were violated.

7 23. In answer to Paragraph 23 of Plaintiffs' Complaint herein, this answering
8 defendant admits that he shot the decedent, that decedent was taken to Hazel Hawkins
9 Hospital and that he died at the hospital. Defendant otherwise denies the allegations in
10 Paragraph 23.

11 24. In answer to Paragraph 24 of Plaintiffs' Complaint herein, this answering
12 defendant admits that Israel Guerrero died on June 10, 2007, but denies the remaining
13 allegations therein.

14 25. In answer to Paragraph 25 of Plaintiffs' Complaint herein, this answering
15 defendant denies the allegations therein.

16 26. In answer to Paragraph 26 of Plaintiffs' Complaint herein, this answering
17 defendant denies the allegations therein.

18 27. In answer to Paragraph 27 of Plaintiffs' Complaint herein, this answering
19 defendant denies the allegations therein.

20 28. In answer to Paragraph 28 of Plaintiffs' Complaint herein, this answering
21 defendant denies the allegations therein.

22 29. In answer to Paragraph 29 of Plaintiffs' Complaint herein, this answering
23 defendant denies the allegations therein.

24 30. In answer to Paragraph 30 of Plaintiffs' Complaint herein, this answering
25 defendant incorporates by reference all responses to the allegations of the Complaint as if set
26 forth fully herein.

27 31. In answer to Paragraph 31 of Plaintiffs' Complaint herein, this answering
28 defendant admits to the allegations therein.

1 32. In answer to Paragraph 32 of Plaintiffs' Complaint herein, this answering
2 defendant denies the allegations therein.

3 33. In answer to Paragraph 33 of Plaintiffs' Complaint herein, this answering
4 defendant denies the allegations therein.

5 34. In answer to Paragraph 34 of Plaintiffs' Complaint herein, this answering
6 defendant denies the allegations therein.

7 35. Plaintiffs' Complaint omits Paragraphs 35 through 42.

8 36. In answer to Paragraph 43 of Plaintiffs' Complaint herein, this answering
9 defendant incorporates by reference all responses to the allegations of the Complaint as if
10 set forth fully herein.

11 37. In answer to Paragraph 44 of Plaintiffs' Complaint herein, this answering
12 defendant denies the allegations therein.

13 38. In answer to Paragraph 45 of Plaintiffs' Complaint herein, this answering
14 defendant incorporates by reference all responses to the allegations of the Complaint as if
15 set forth fully herein.

16 39. In answer to Paragraph 46 of Plaintiffs' Complaint herein, this answering
17 defendant denies the allegations therein.

18 40. In answer to Paragraph 47 of Plaintiffs' Complaint herein, this answering
19 defendant denies the allegations therein.

20 41. In answer to Paragraph 48 of Plaintiffs' Complaint herein, this answering
21 defendant incorporates by reference all responses to the allegations of the Complaint as if
22 set forth fully herein.

23 42. In answer to Paragraph 49 of Plaintiffs' Complaint herein, this answering
24 defendant denies the allegations therein.

25 43. In answer to Paragraph 50 of Plaintiffs' Complaint herein, this answering
26 defendant denies the allegations therein.

27 44. In answer to Paragraph 51 of Plaintiffs' Complaint herein, this answering
28 defendant incorporates by reference all responses to the allegations of the Complaint as if

1 set forth fully herein.

2 45. In answer to Paragraph 52 of Plaintiffs' Complaint herein, this answering
3 defendant denies the allegations therein.

4 46. In answer to Paragraph 53 of Plaintiffs' Complaint herein, this answering
5 defendant denies the allegations therein. 47.

6 In answer to Paragraph 54 of Plaintiffs' Complaint herein, this answering defendant
7 denies the allegations therein.

8 48. In answer to Paragraph 55 of Plaintiffs' Complaint herein, this answering
9 defendant denies the allegations therein.

10 49. In answer to Paragraph 56 of Plaintiffs' Complaint herein, this answering
11 defendant incorporates by reference all responses to the allegations of the Complaint as if
12 set forth fully herein.

13 50. In answer to Paragraph 57 of Plaintiffs' Complaint herein, this answering
14 defendant denies the allegations therein.

15 51. In answer to Paragraph 58 of Plaintiffs' Complaint herein, this answering
16 defendant denies the allegations therein.

17 52. In answer to Paragraph 59 of Plaintiffs' Complaint herein, this answering
18 defendant lacks information in which to admit or deny the allegations of this Paragraph, and
19 therefore, denies.

20 53. In answer to Paragraph 60 of Plaintiffs' Complaint herein, this answering
21 defendant incorporates by reference all responses to the allegations of the Complaint as if
22 set forth fully herein.

23 54. In answer to Paragraph 61 of Plaintiffs' Complaint herein, this answering
24 defendant lacks information in which to admit or deny the allegations of this Paragraph, and
25 therefore, denies.

26 55. In answer to Paragraph 62 of Plaintiffs' Complaint herein, this answering
27 defendant denies the allegations therein.

28

1 56. In answer to Paragraph 63 of Plaintiffs' Complaint herein, this answering
2 defendant denies the allegations therein.

3 57. In answer to Paragraph 64 of Plaintiffs' Complaint herein, this answering
4 defendant denies the allegations therein.

5 58. In answer to Paragraph 65 of Plaintiffs' Complaint herein, this answering
6 defendant denies the allegations therein.

7 59. In answer to Paragraph 66 of Plaintiffs' Complaint herein, this answering
8 defendant denies the allegations therein.

9 60. In answer to Paragraph 67 of Plaintiffs' Complaint herein, this answering
10 defendant incorporates by reference all responses to the allegations of the Complaint as if
11 set forth fully herein.

12 61. In answer to Paragraph 68 of Plaintiffs' Complaint herein, this answering
13 defendant admits to the allegations therein.

14 62. In answer to Paragraph 69 of Plaintiffs' Complaint herein, this answering
15 defendant denies the allegations therein.

16 63. In answer to Paragraph 70 of Plaintiffs' Complaint herein, this answering
17 defendant admits to the allegations therein.

18 64. In answer to Paragraph 71 of Plaintiffs' Complaint herein, this answering
19 defendant denies the allegations therein.

20 65. In answer to Paragraph 72 of Plaintiffs' Complaint herein, this answering
21 defendant denies the allegations therein.

22 **AFFIRMATIVE DEFENSES**

23 AS AND FOR A FIRST AFFIRMATIVE DEFENSE, the Complaint fails to state a claim
24 upon which relief can be granted.

25 AS AND FOR A SECOND AFFIRMATIVE DEFENSE, Decedent was careless and
26 negligent in and/or about the matters referred to in said Complaint, and further that the
27 Decedent failed to exercise ordinary or any care for Decedent's own safety and such
28 carelessness and negligence on the part of Decedent proximately caused and contributed to

1 the damage, detriment or injury sustained by Decedent, if any, and that Plaintiffs' recovery
2 should therefore either be barred or reduced to the extent of Decedent's negligence.

3 AS AND FOR A THIRD AFFIRMATIVE DEFENSE, any harm suffered was a result of
4 a negligent or otherwise wrongful conduct of persons other than Defendant and that the
5 conduct of the person other than Defendant was the sole and proximate cause of the injuries
6 and damages alleged by Plaintiff.

7 AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, all actions taken by Defendant,
8 including actions of DOE Defendants, were undertaken in good faith and with a reasonable
9 belief that the actions were valid, necessary, constitutionally proper and objectively
10 reasonable for a police officer in the same circumstances, entitling Defendant to qualified
11 immunity from Plaintiffs' claimed injuries and damages.

12 AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, Plaintiffs have failed to mitigate their
13 damages, if any.

14 AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, the reports of which Plaintiffs
15 complain were made honestly, in good faith and not maliciously in that Defendant reported
16 what his observation was and what occurred.

17 AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiffs'
18 Complaint is barred by the Doctrine of Unclean Hands.

19 AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE, Defendant is entitled to immunity
20 under the Eleventh Amendment.

21 AS AND FOR A NINTH AFFIRMATIVE DEFENSE, Defendant contends that he is
22 immune from liability pursuant to the Federal Civil Rights Act because he was acting in good
23 faith and entertained a reasonable belief that his actions were necessary.

24 AS AND FOR A TENTH AFFIRMATIVE DEFENSE, Defendant contends that he is
25 immune pursuant to the principals of qualified immunity.

26 AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE, Defendant alleges that he has
27 not deprived any person, including Decedent, of any right, privilege, or immunity guaranteed
28 by the Constitution or laws of the United States or the State of California, and, therefore,

1 Defendant is not liable.

ASAD

2 FOR A TWELFTH AFFIRMATIVE DEFENSE, Defendant alleges that the acts or omissions
3 set forth in the First Amended Complaint, even if proven true, constitute mere negligence and
4 were not intentional, willful or grossly negligent, and as a consequence, fails to state a claim
5 for relief.

6 AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE, Defendant employees were
7 objectively reasonable in light of the facts and circumstances confronting them, and their
8 conduct did not violate clearly established statutory or Constitutional rights of which a
9 reasonable person would have known.

10 AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE, Plaintiffs' special damages,
11 if any, should be reduced to the actual amount paid to Decedent's health care providers for
12 services reasonably related to Decedent's injuries, or are anticipated to be paid in the future.

13
14 WHEREFORE, Defendant prays as follows:

- 15 1. Dismissal of Plaintiff's Complaint with prejudice;
- 16 2. Plaintiffs take nothing by reason of their Complaint;
- 17 3. Defendant be awarded reasonable attorney's fees;
- 18 4. Defendant be awarded costs of suit; and,
- 19 5. For such other and further relief as the Court deems appropriate.

20
21 Dated: February 28, 2008

JORGENSEN, SIEGEL,
MCCLURE & FLEGEL, LLP



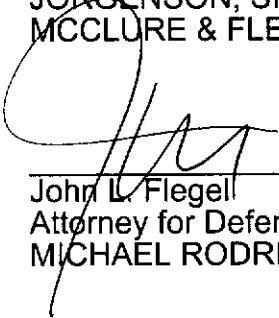
John L. Flegel
Attorney for Defendant
MICHAEL RODRIGUES

REQUEST FOR JURY TRIAL

Defendant MICHAEL RODRIGUES hereby requests a jury trial in this action.

Dated: February 28, 2008

JORGENSEN, SIEGEL,
MCCLURE & FLEGEL, LLP



John L. Flegel
Attorney for Defendant
MICHAEL RODRIGUES

PROOF OF SERVICE BY MAIL

(CCP 1013a, 2015.5)

I declare that I am a citizen of the United States and that I am over the age of 18 years, employed in the County of San Mateo, and not a party to the within action; my business address is 1100 Alma Street, Suite 210, Menlo Park, CA 94025.

On February 28, 2008, I served the within **ANSWER OF DEFENDANT MICHAEL RODRIGUES TO PLAINTIFFS' COMPLAINT FOR DAMAGES FOR WRONGFUL DEATH AND SURVIVAL ACTION FOR VIOLATION OF CIVIL RIGHTS and DEMAND FOR JURY TRIAL** on the following named parties in said action by placing a true copy thereof for collection and mailing at Menlo Park, California, following our ordinary business practices. I am readily familiar with this business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage prepaid. The envelope was addressed as follows:

Michael David Liberty, Esq.
Law Office of Michael D. Liberty
1290 Howard Avenue, Suite 303
Burlingame, CA 94010

(Attorneys for Plaintiffs)

Michael C. Serverian, Esq.
Rankin, Landsness, Lahde, Serverian & Stock
96 N. Third Street, Suite 500
San Jose, CA 95112

(Attorneys for Defendants County of San Benito and Sheriff Curtis J. Hill)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Menlo Park, California on February 28, 2008.

ROBIN RIGGINS